

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

-against-

DR. ROBERT BENTIVEGNA, F.H.S.D.,

Defendant.

20-CV-0253 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, who is incarcerated in Sing Sing Correctional Facility, is proceeding *pro se* and *in forma pauperis* (“IFP”). Plaintiff filed this complaint under 42 U.S.C. § 1983, alleging that Defendant violated his constitutional rights while he was incarcerated in Green Haven Correctional Facility. By order dated February 21, 2020, the Court dismissed the complaint, but granted Plaintiff leave to file an amended complaint to address deficiencies in his original pleading.<sup>1</sup> The Court received Plaintiff’s amended complaint on March 12, 2020, and the Court has reviewed it. The action is dismissed for the reasons set forth below.

**STANDARD OF REVIEW**

The Prison Litigation Reform Act requires that federal courts screen complaints brought by prisoners who seek relief against a governmental entity or an officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner’s complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such

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<sup>1</sup> The Court’s February 21, 2020 order dismissed Plaintiff’s claims against the New York State Department of Corrections and Community Supervision on the grounds of Eleventh Amendment immunity and dismissed his claims against Dr. Bentivegna for failure to state a claim on which relief may be granted. (ECF No. 7.)

relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint if the court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they *suggest*,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

## **BACKGROUND**

The following allegations are taken from the amended complaint. While Plaintiff was incarcerated in Green Haven Correctional Facility, he “was treated at Mount Vernon-Montefiore

Hospital Emergency Room for severe weight loss, muscle loss, malnutrition, dehydration, mental depression, anxiety, high blood pressure, nausea, [and] dizziness.” (ECF No. 8, at 3.) Plaintiff asserts that this condition created an “unreasonable risk of serious damage to his health caused by deliberate indifference contemplating a condition of degeneration to plaintiff.” (*Id.*) Green Haven Health Service Director Dr. Bentivegna discontinued Plaintiff’s prescription for Ensure Nutritional Drink, which Plaintiff maintains “resulted in further degradation.” (*Id.*) He asserts that Dr. Bentivegna “was well aware of depriving plaintiff the prescribed Ensure Supplemental Drink.” (*Id.*) Plaintiff seeks declaratory relief and money damages.

## **DISCUSSION**

### **A. Section 1983 Claim**

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a “state actor.” *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

To state a § 1983 claim for inadequate medical care under the Eighth Amendment, a plaintiff must allege facts showing that correction officials were deliberately indifferent to the plaintiff’s serious medical condition. *See Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Caiozzo v. Koreman*, 581 F.3d 63, 69-72 (2d Cir. 2009). Deliberate indifference claims include an objective component and a subjective component. *Hill v. Curcione*, 657 F.3d 116, 122 (2d Cir. 2011). Prisoners alleging deliberate indifference to their medical needs must satisfy both components to state a claim under the Eighth Amendment.

The objective component requires that a prisoner “show that the conditions, either alone or in combination, pose[d] an unreasonable risk of serious damage to his health.” *Darnell v. Pineiro*, 849 F.3d 17, 30 (2d Cir. 2017) (internal quotation marks and citation omitted). The

deliberate indifference standard “contemplates a condition of urgency such as one that may produce death, degeneration, or extreme pain.” *Charles v. Orange Cty.*, 925 F.3d 73, 86 (2d Cir. 2019); *see Harrison v. Barkley*, 219 F.3d 132, 136 (2d Cir. 2000) (holding that the medical need must be a “sufficiently serious” condition that “could result in further significant injury or the unnecessary and wanton infliction of pain”) (internal quotation marks and citation omitted)).

The subjective component requires a prisoner to show that the defendant officials acted with a “sufficiently culpable state of mind” in depriving him of adequate medical treatment. *Nielsen v. Rabin*, 746 F.3d 58, 63 (2d Cir. 2014) (citing *Salahuddin v. Goord*, 467 F.3d 263, 280 (2d Cir. 2006)). That is, the prisoner must state facts showing that the medical professional possessed “a state of mind that is the equivalent of criminal recklessness.” *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996); *see Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (holding that the subjective component requires that the plaintiff show that a medical professional “was aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]” and that the officer drew the inference).

Where a medical professional inadvertently or negligently fails to provide adequate care, a prisoner cannot state a constitutional violation under the Eighth Amendment. *See Estelle*, 429 U.S. at 106. Thus, a “mere disagreement over the proper treatment” is not actionable. *See Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998); *see, e.g., Hill*, 657 F.3d at 123 (holding that medical officer who prescribed Motrin rather than stronger pain medication to treat a broken wrist did not have the “culpable state of mind” to satisfy the subjective component of the deliberate indifference standard).

The amended complaint suffers from the same deficiencies as the original complaint, which were discussed in the Court’s February 21, 2020 order to dismiss. Plaintiff’s allegation

that Dr. Bentivegna discontinued Plaintiff's prescription for Ensure does not suggest that Dr. Bentivegna was deliberately indifferent to Plaintiff's serious medical needs. Plaintiff asserts legal conclusions, such as that Dr. Bentivegna acted with "deliberate indifferent contemplating a condition of degeneration to plaintiff," ECF No. 8, at 10, but he fails to plead facts that support these legal conclusions. Even if the Court were to assume that Plaintiff has alleged an objectively serious medical need, his allegation that Dr. Bentivegna did not prescribe him Ensure does not suggest Dr. Bentivegna acted with a "state of mind that is the equivalent to criminal recklessness." *See Hathaway*, 99 F.3d at 553. Plaintiff's allegations rather suggest that Dr. Bentivegna disagreed with Plaintiff over whether Ensure was the proper course of treatment for the wide range of symptoms that Plaintiff was experiencing. The Court therefore dismisses Plaintiff's amended complaint for failure to state claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

## **B. Supplemental Jurisdiction**

A district court may decline to exercise supplemental jurisdiction over state-law claims when it "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). Generally, "when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988). Having dismissed the federal claims over which the Court has original jurisdiction, the Court declines to exercise its supplemental jurisdiction over any state-law claims Plaintiff may be asserting. *See Kolari v. New York-Presbyterian Hosp.*, 455 F.3d 118, 122 (2d Cir. 2006) ("Subsection (c) of § 1367 'confirms the discretionary nature of supplemental jurisdiction by enumerating the circumstances in which district courts can refuse its exercise.'") (quoting *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997)).

**C. Leave to Amend**

District courts generally grant a *pro se* plaintiff leave to amend a complaint to cure its defects, but leave to amend may be denied if the plaintiff has already been given an opportunity to amend but has failed to cure the complaint's deficiencies. *See Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's amended complaint cannot be cured with a further amendment, the Court declines to grant Plaintiff another opportunity to amend.

**CONCLUSION**

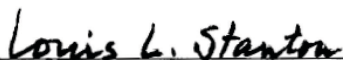
The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Court dismisses Plaintiff's amended complaint for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court declines to exercise supplemental jurisdiction over any state-law claims Plaintiff may be asserting. 28 U.S.C. § 1367(c)(3).

SO ORDERED.

Dated: March 24, 2020  
New York, New York

  
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Louis L. Stanton  
U.S.D.J.